

EXHIBIT H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MUSA HOXHAJ, ABDOU EL SHBEINY, AND RICARDO
CORDERO,

Plaintiffs, Case No.:
21-cv-6486 (LJL)

-against-

MICHAEL CETTA, INC., MICHAEL CETTA, AND
STEVEN CETTA,

Defendants.

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DEPOSITION OF: MUSA HOXHAJ
(Plaintiff)

PURSUANT TO: Notice

DATE: May 26, 2022

TIME: 11:40 a.m. - 3:47 p.m.

HELD: Videoconference

BEFORE: Stephen P. Sudano, a shorthand
reporter and Notary Public
in and for the State of New York.

2 A P P E A R A N C E S:

3

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BY: ADAM COLLYER, ESQ.
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ALSO PRESENT:

23

Ricardo Cordero, Co-Plaintiff,

24

Abdou El Shbeiny, Co-Plaintiff,

25

Susan Edelstein, representative of

1 M. HOXHAI

2 A. Yes.

3 Q. Did you review this document prior
4 to its filing?

5 A. I think so, but I'm not sure.

6 Q. Just taking a look at the caption,
7 the space in the box, your name is there,
8 right?

9 A. Right.

10 Q. And then there are two other
11 gentlemen listed, Mr. El Shbeiny and
12 Mr. Cordero. Who is Mr. El Shbeiny?

13 A. That's a gentleman that worked with
14 us.

15 Q. And that's also true about
16 Mr. Cordero?

17 A. Yes, sir.

18 Q. When you say that they used to work
19 with you, what do you mean by that?

20 A. Working together at Sparks.

21 Q. You mentioned that you were a
22 maître d'. Sparks also refers to that as a
23 front of the house manager, yes?

24 A. That's what Sparks, yes.

25 Q. Was Mr. Cordero a maître d' or a

1 M. HOXHAI

2 front of the house manager?

3 A. Yes.

4 Q. And Mr. El Shbeiny, as well?

5 A. Yes.

6 Q. And below that, is the three
7 defendants. Michael Cetta, Inc. is Sparks
8 Steak House, correct?

9 A. Yes.

10 Q. What about Michael Cetta; who is
11 he?

12 A. The owner.

13 Q. When you say "the owner," do you
14 mean the owner of Sparks?

15 A. Yes.

16 Q. And what about Steven Cetta; who is
17 Steven Cetta?

18 A. That's Mike Cetta's son and an
19 owner of Sparks.

20 Q. So everybody shares the same last
21 name here, I'll refer to Michael or
22 Mr. Cetta, and I'll refer to Steven as Steve,
23 if you're fine with that.

24 A. I'm sorry?

25 Q. Just to make sure that the

1 M. HOXHAI

2 A. It was -- just like it was
3 different, like he was not friendly with me
4 anymore.

5 Q. You were friendly prior to 2012?

6 A. Yes.

7 Q. What did you do with Steve as
8 friends?

9 A. In the old days, we were all
10 friends, so we used to go out with Walter and
11 Abdou, and stuff was -- was -- was good.
12 Like I said, was good. We used to go
13 Formula 1, Brazil, Montreal.

14 Q. You used to travel together.

15 A. Yes.

16 Q. Is there a specific point in 2012
17 when that changed?

18 A. When the -- I believe things
19 changed when the servers, they asked to join
20 the union.

21 Q. You told me you weren't a union
22 member, right?

23 A. No.

24 Q. Why would the servers seeking to
25 join a union have any relationship with your

1 M. HOXHAI

2 A. I respect him as a boss.

3 Q. When were you promoted from server
4 to maître d', or front of the house manager?

5 A. Um, I'm not sure, but it's maybe
6 '97, '98, when they expended, like a few
7 month later, they expand the restaurant, they
8 become bigger.

9 Q. Who promoted you?

10 A. Pat Cetta.

11 Q. For the record, his full name is
12 Pasquale.

13 A. Yes.

14 Q. And who is that?

15 A. The brother of Michael Cetta.

16 Q. Do you believe that Mike had a hand
17 in your promotion to manager, as well?

18 A. I don't know, but I know Pat Cetta
19 promoted me and Abdou.

20 Q. What did Abdou have to do with it?

21 A. No, I said he promoted me and Abdou
22 at the same time.

23 Q. Oh, he promoted you and Abdou at
24 the same time.

25 A. Three days. Three days maître d',

1 M. HOXHAI

2 worked as Sparks?

3 A. I think it was March 2020. I don't
4 know if it was 14th or something like that.
5 It was Saturday; that's all I remember, the
6 day.

7 Q. Did the restaurant close down after
8 that?

9 A. Yes, they told -- they told us it
10 was closed, yes.

11 Q. Why did the restaurant close?

12 A. COVID-19, I believe.

13 Q. What happened to all of the
14 employees when the restaurant shutdown?

15 A. I don't know. I think they stayed
16 home.

17 MR. COLLYER: Can you bring up
18 Exhibit B.

19 If you could zoom in a little bit
20 for Mr. Hoxhaj.

21 Q. Mr. Hoxhaj I'm going to show you
22 what's been marked as Defendants' Exhibit B.
23 Take a minute and familiarize yourself with
24 it.

25 A. (Perusing.)

1 M. HOXHAI

2 Yes.

3 Q. Do you recognize this document?

4 A. I believe so, yes. I think it was
5 sent to me by mail. I'm not sure. Just --
6 yes.

7 Q. This is the letter that was sent
8 indicating the restaurant was closed because
9 of COVID-19 and that you were being laid off
10 at this point effective March 28th, correct?

11 A. Yes.

12 Q. The third paragraph down says,
13 "What this means for our employees is that
14 you will be laid off from your employment
15 with Sparks Steak House, effective March 28,
16 2020." Do you see that?

17 A. Yes.

18 Q. Does that refresh your recollection
19 that Sparks' employees were laid off because
20 of --

21 A. Yes.

22 Q. -- mandatory closure?

23 A. Yes.

24 MR. COLLYER: Stephen, if you
25 could scroll down toward the bottom of

1 M. HOXHAI

2 that page. Thank you.

3 Q. Mr. Hoxhaj, there's a paragraph
4 that reads, "On Wednesday, March 25th, you
5 will receive your final, regular base
6 paycheck equal to 40 hours for the period
7 March 16th to March 22nd, when the restaurant
8 was closed." Do you see that?

9 A. Yes.

10 Q. Does that refresh your recollection
11 that the last days the restaurant was open
12 was March 15th?

13 A. Yes.

14 Q. And you were paid for the following
15 week even though the restaurant was closed,
16 correct?

17 A. Absolutely.

18 Q. And then the week after that,
19 Sparks paid its employees another 40 hours at
20 a rate of \$15 per hour even though the
21 restaurant was closed then, as well, right?

22 A. Yes.

23 MR. COLLYER: Stephen, if you
24 could scroll up just a little bit to
25 the top of that paragraph that's cut

1 M. HOXHAI

2 A. Yes. Yes.

3 Q. Each of these pages is going to
4 look similar. They're all the same form,
5 just different dates.

6 A. Oh, I'm sorry.

7 Q. No, it's okay.

8 Again, on the left-hand side, is
9 information about your former employer,
10 Michael Cetta, Inc., right?

11 A. Yes.

12 Q. And again, in the middle is your
13 weekly wage, and it notes that no allowances
14 are being taken, correct?

15 A. Yes.

16 Q. And on the right-hand side, is that
17 your signature?

18 A. Yes.

19 Q. What's the date on it?

20 A. February 1, 2013.

21 Q. Thank you.

22 MR. COLLYER: Let's go to the
23 third page.

24 Q. This should also be fairly familiar
25 at this point, the third page of the

1 M. HOXHAI

2 A. Yes.

3 Q. This is a pay stub. And is that
4 your name and address in the top, left-hand
5 box?

6 A. Yes.

7 Q. What is the check date in the box
8 next to it?

9 A. 12/23/2019? 12/20 --

10 Q. That's the check period, right?
11 That's the period it covers?

12 A. I guess.

13 Q. Take A look in the box that says,
14 "Hours and Earning." Do you see that box
15 below it?

16 A. Yes.

17 Q. See that it says, "Regular Salary
18 \$1,800"?

19 A. Right.

20 Q. And it also includes a \$250 expense
21 allowance. Do you see that?

22 A. Yes.

23 Q. What are -- what was the \$250
24 expenses payment for?

25 A. To be honest with you, nobody every

1 M. HOXHAI

2 explained to me what that means. What is --
3 what it was for. But once I asked Walter
4 because he was older than me, and he told me
5 this is for uniforms.

6 Q. Got it.

7 Take a look on this pay stub. Does
8 it show any tip credit being taken or any
9 deductions for meals? Anything like that?

10 A. Descriptions? Yes.

11 Q. Take a look.

12 A. Yes.

13 Q. Where do you see that?

14 A. I see the description. I see the
15 box that you're asking me to look.

16 Q. Do you see anything that shows that
17 the restaurant took a tip credit of any kind?

18 A. I don't see.

19 Q. Do you see anything that reflects
20 tips at all?

21 A. No.

22 Q. Do you see anything that deducts
23 for meals that you might have eaten at the
24 restaurant or anything like that?

25 A. No.

1 M. HOXHAI

2 imbued to the waiters.

3 MR. O'NEILL: Object to the form.

4 Q. You can respond.

5 A. Like I said.

6 You going to ask me the next
7 question?

8 MR. COLLYER: Stephen, can you
9 bring up Exhibit H.

10 Q. Mr. Hoxhaj, showing you what's been
11 marked as Defendants' Exhibit H.

12 A. Yes.

13 Q. Do you see this on your screen?

14 A. Yes.

15 Q. This is a schedule, right?

16 A. Right.

17 Q. I'll represent to you that in
18 Mr. Cordero's deposition, he told us that the
19 language up at the top was written by him.
20 You see that it says, "No changes will be
21 made without manager approval"?

22 A. Yes.

23 Q. Who do you believe Mr. Cordero was
24 referring to when he wrote that?

25 A. Mr. Cordero wrote that on -- this

1 M. HOXHAI

2 is like I said, okay, the title they gave us
3 to write that down because the waiters, after
4 we did the schedule, after we place them,
5 after we give them everything they wanted,
6 they will go and grab the schedule and change
7 days off and their closings and stuff without
8 our knowledge. So when you go the next day,
9 you have, let's say, Andre working, but
10 Andre's not there; Al is there, so that's
11 the -- the definition of this, asking them do
12 not change anything because you're confusing
13 the whole thing.

14 Q. So to be clear, you asked them to
15 speak to you for approval prior to changing
16 the schedule, right?

17 A. Yes, and not to touch it.

18 Q. They needed your approval for their
19 schedule to change, right?

20 MR. O'NEILL: Object to the form.

21 Q. You can respond.

22 A. They -- they did it anyway.

23 Q. That's not what I'm asking.

24 You required manager approval to
25 change the schedule, right?

1 M. HOXHAI

2 A. We -- we did ask them not to change
3 it. They did it anyway, and nothing was
4 done. The house knew. Susan knew. Steve
5 knew. Sales knew. Nobody took action.

6 Q. If one of the servers violated a
7 policy or a directive from one of the
8 managers, you had the authority to write them
9 up, right?

10 A. Can you repeat that again, please?

11 Q. If one of the servers violated a
12 policy or a directive from you, you had the
13 authority to write them up, right?

14 A. What policy? I had no policies. I
15 just followed -- I had no policies. I
16 followed whatever they told me from the
17 office.

18 Q. You seem to have a policy at the
19 top of this page, right?

20 A. He just wrote it --

21 MR. O'NEILL: Object to the form.
22 Argumentative.

23 Q. You can respond.

24 MR. COLLYER: It's not
25 argumentative.

1 M. HOXHAI

2 Q. What were you saying about the
3 title? Can you repeat that?

4 A. It's -- it says, "Manager
5 Complaint." It was printed in the office. I
6 think Octavio printed it.

7 Q. So you wouldn't call yourself a
8 manager?

9 A. No. If I was a manager, this guy
10 wouldn't curse me like that.

11 MR. COLLYER: Got to the last
12 page, please.

13 Q. On the last page, is a group of
14 four signatures, right --

15 A. Yes.

16 Q. -- Mr --

17 A. Yes.

18 Q. -- Hoxhaj?

19 And on the bottom left, that's your
20 signature, right?

21 A. Yes.

22 Q. And in the first paragraph --

23 MR. COLLYER: Can you go all the
24 way to the top, Stephen.

25 Q. The first sentence in this letter

1 M. HOXHAI

2 that's signed by you and from you, says,
3 "This letter is to bring the attention to how
4 we, the managers (Abdou, Musa, Octavio and
5 Ricardo) are feeling toward Sayed." Do you
6 see that?

7 A. Yes.

8 Q. At the start of the next paragraph,
9 it says, "Ever since he started to work as a
10 manager, he chose not to work with us." Do
11 you see is that?

12 A. Yes. Yes.

13 Q. Did I read that correctly?

14 A. Yes.

15 Q. Does that refresh your recollection
16 that in October of 2019 you understood Sayed
17 to be a manager?

18 A. We wrote that because of that title
19 they gave us. I couldn't write that, me, as
20 a busboy, I'm going to write this letter, or
21 a waiter, because they wouldn't accept it.
22 So we use that title they give us.

23 I'm sorry?

24 Q. Who wouldn't accept it?

25 A. The office.

1 M. HOXHAI

2 Q. I want to talk about your age.

3 A. Exactly, that's what I thought you
4 were --

5 MR. O'NEILL: Wait for a question,
6 Musa.

7 (Whereupon, a discussion was held
8 off the record at this time.)

9 Q. We're going to talk about your age
10 discrimination claim now.

11 A. Okay.

12 Q. You said you're 56?

13 A. Yes.

14 Q. So you were 54 when you last worked
15 as Sparks?

16 A. Yes.

17 Q. What's your date of birth?

18 A. February 20, 1966.

19 Q. So in September, when the
20 restaurant reopened, you would have still
21 been 54 at the time?

22 A. I believe so.

23 Q. What's the basis for your belief
24 that your age had anything to do with the
25 fact that you didn't get recalled in

1 M. HOXHAI

2 faith. And I believe those ones, yes.

3 Q. How were you treated less well
4 because of your religion?

5 A. I was treated because the comments
6 they made, Steve and Mike.

7 Q. With what comments are you
8 referring to?

9 A. Let's say during the month of
10 Ramadan, it's a month that we fast, we have a
11 break, that time, like around 8 o'clock, or
12 whatever the sunset is, we're supposed to eat
13 something because we didn't eat for 16 hours,
14 whatever. So every time that we go to eat
15 food, we had problems always, like especially
16 after 2012. I would say this again.

17 The cook would refuse to warm up
18 our food. And there was one case in 2015.
19 It was June, was the -- Ramadan was in June.
20 We ask the -- we sent the coworkers to tell
21 him, "Can you warm up the food a little bit
22 for us," the same lunch from lunch, and the
23 cook would refuse.

24 Then I just said, "Let's not make a
25 big deal." It was -- my main concern is to

1 M. HOXHAI

2 work and keep my job, and I don't want to
3 bring this into the business.

4 So one night, he refused to warm up
5 the food for us, and I used any credit card.
6 I gave it to one of my coworkers to go buy
7 food for us outside because everybody was
8 starving. He complained to Steve before
9 that. This guy's refusing to warm up the
10 food. He says, "I'll talk to him. I'll talk
11 to him." But he continued doing it.

12 So one day, somebody wrote a letter
13 against him that he refused to warm up the
14 food, and Mike Cetta came the next day, and I
15 believe he suspended him for a lot of time.
16 That's one of the reasons.

17 Q. Who was the cook who refused to
18 warm up your food?

19 A. Earnesto.

20 Q. Earnesto didn't have any
21 supervisory authority over you, did he?

22 A. He was absolute guy in the kitchen.
23 I as a -- yeah, he did. I couldn't even go
24 to the kitchen. If he see me in the kitchen,
25 he had the authority to chase me out.

1 M. HOXHAI

2 Q. Could Earnesto fire you?

3 A. I don't know.

4 Q. Did Earnesto discipline you?

5 A. In the kitchen, yes. He would tell
6 me the leave the kitchen.

7 Q. Did Earnesto take any tangible
8 action against you, like reducing your salary
9 or suspending you?

10 A. He -- when they used to make food
11 for us, he refused to cook for me at the end
12 of the night.

13 Q. And you said that Mike Cetta
14 suspended him. Do you know how long that
15 suspension was for?

16 A. A couple of weeks, I believe. With
17 the pay.

18 Q. You said this was in 2015?

19 A. I believe it was 2015.

20 Q. In what other ways were you treated
21 less well because of your religion?

22 A. Um, one day, Steve walked up to me
23 and said to me, "I heard that you brought a
24 copy of the Quran here." He put me -- he
25 called me on the side by Hudson room to the

1 M. HOXHAI

2 A. I'm not sure. He would say that.
3 I heard him say that many times in the bar
4 when he was drinking. The bar right next --
5 the bar is right next to the front over
6 there.

7 Q. Before 2015?

8 A. I -- I'm not sure there was so many
9 comments. So many things I don't remember
10 when and.

11 Q. Did you ever complain about age or
12 religious discrimination?

13 A. To who?

14 Q. To Mike.

15 A. I just told him, "I'm not happy,
16 what he's saying," but I never complained.

17 Q. You told Mike about the comments
18 that Steve was making?

19 A. Actually, Mike one day, he pulled
20 me in Table 4, and he said, "Musa, you know
21 what, Steve is right about these Islam
22 things. Islams are crazy but the Muslims are
23 okay." I don't know how they confused it.

24 Q. What prompted him to call you in
25 and say that to you?

1 M. HOXHAI

2 you mean after the events of September 11,
3 2001?

4 A. Yes, sir.

5 Q. Did you ever make any complaints to
6 Susan?

7 A. The 2011? -- 9/11, you mean?

8 Q. About any of the discrimination
9 that you allege to have suffered.

10 A. I never knew what Susan position
11 was. Did she never told me, so I didn't know
12 who to complain. And I didn't want to
13 complain because I didn't want to lose my
14 job.

15 Q. Did you ever think to ask what
16 Susan's position was?

17 A. I never asked anyone. If somebody
18 doesn't, "Say this is my position," and give
19 me a flier, and, "I'm your manager. I'm your
20 HR, this." I got to be honest, with you, you
21 have to be your best behavior to work there
22 and say nothing and go home. That was my
23 approach. I didn't want to go into this
24 things because I have family. My wife
25 doesn't work, and family's taken care of, so

1 M. HOXHAI

2 I didn't want to ask anything. I was lucky.
3 Like Mike says I have a job. I'm staying
4 there.

5 (Whereupon, a discussion was held
6 off the record at this time.)

7 Q. Did you ever file a complaint with
8 the City Commission on Human Rights alleging
9 race or religious discrimination?

10 A. I needed my job.

11 Q. Did you ever file a complaint with
12 the State Division of Human Rights?

13 A. No.

14 Q. Did you ever file a complaint with
15 the Equal Employment Opportunity Commission?

16 A. No.

17 Q. You're aware that Sparks has an
18 antidiscrimination and harassment policy?

19 A. I was not aware. Like I said, I
20 went there to work, and I asked very few
21 questions.

22 MR. COLLYER: Stephen, can you
23 bring up Exhibit X.

24 Q. I'm showing you what's been marked
25 as Defendants' Exhibit X. Do you recognize

1 M. HOXHAI

2 I'm sorry.

3 MR. COLLYER: Sure, go ahead.

4 THE WITNESS: Mike, my lawyer?

5 MR. O'NEILL: No, wait for a
6 question.

7 THE WITNESS: No, I have to add
8 something that I forgot about
9 something. Or no?

10 MR. O'NEILL: Well, we're taking a
11 break, so you can talk to me.

12 THE WITNESS: Yeah.

13 MR. COLLYER: Yeah, why don't you
14 guys discuss. We'll take 15 minutes
15 and come back, okay?

16 THE WITNESS: Okay, thank you.

17 MR. COLLYER: See everybody at
18 3:20.

19 (Whereupon, a recess was taken at
20 this time.)

21 Q. Mr. Hoxhaj, were you and
22 Mr. El Shbeiny the only Muslim employees at
23 Sparks?

24 A. No.

25 Q. Who were the other Muslim employees

1 M. HOXHAI

2 that have been employed by Sparks during the
3 time that you have worked there?

4 A. For -- from what time to what time?
5 Because I have been there 32 years, so I must
6 have gone through 3- or 400 waiters.

7 Q. I'm sorry. I just want record to
8 be clear. Are you suggesting that it's been
9 3- to 400 waiters that have been employed
10 overall, or is that 3- to 400 waiters that
11 have been employed were Muslim?

12 A. No, no. I asked you what time,
13 what decade you're talking about because if
14 we go back 30 years, I said there would be 3-
15 or 400 waiters all together. So I don't know
16 when. What -- when you mean with that
17 question? I want to be specific with you as
18 much as I can.

19 Q. Let's stick with between 2015 to
20 your last day of work.

21 A. From 2015 to my last day of work,
22 practicing Muslims were about maybe six,
23 seven, eight.

24 Q. Who are they?

25 A. I would say it was me, Abdou,